

**EXPLANATORY MEMORANDUM TO
THE VALUE ADDED TAX (SUPPLEMENTARY CHARGE) ORDER 2009**

2009 No. 3127

1. This explanatory memorandum has been prepared by HM Revenue & Customs (HMRC) and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

2.1 The instrument amends Schedule 3 to the Finance Act 2009 (“Schedule 3”), Parts 1 to 5 of which provide for a supplementary charge to VAT in specified circumstances.

2.2 The intention is that the supplementary charge otherwise due on a supply of goods under paragraph 2 of Schedule 3 shall not be due where the only relevant condition met is condition D, the VAT invoice relates to a specified supply (a supply of goods under a hire purchase agreement etc), forms part of the agreement and is issued in accordance with normal commercial practice and the basic time of supply of the goods is intended and expected to be within six months of the date of that invoice.

3. Matters of special interest to the Select Committee on Statutory Instruments

This is the first use of the powers in paragraph 15 of Schedule 3.

4. Legislative Context

4.1 This Order has been made by the Treasury in exercise of its powers under paragraph 15 of Schedule 3.

4.2 Paragraph 15 provides that the Treasury may by order provide that there is no supplementary charge on supplies (including grants of rights to goods or services) of a description specified in the order and that such an order may make provision having effect in relation to supplies of goods or services which are treated as taking place on or after 25 November 2008 or a later date.

4.3 Paragraph 23 of Schedule 3 provides that an order under paragraph 15 must be made by statutory instrument and is subject to the negative resolution procedure.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- 7.1 The intention was that the supplementary charge to VAT should not impact on normal commercial transactions and the primary legislation was drafted so as to seek to achieve this.
- 7.2 HMRC has been alerted to a potential problem in relation to hire purchase agreements and other similar transactions where the terms of payment are spread over a period in excess of 6 months but the documentation (including the VAT invoice) is completed in advance of delivery of the goods.
- 7.3 As currently drafted, such transactions would satisfy condition D in paragraph 2(8) of Schedule 3, thereby triggering a supplementary charge to VAT.
- 7.4 As it was not intended that a supplementary charge should be due in relation to these types of transactions where the only relevant condition met is condition D, the decision has been made to amend the legislation to remove such transactions from the ambit of the supplementary charge.

8. Consultation outcome

The changes effected by this instrument are administrative and relieving and, as such, have not been subject to consultation.

9. Guidance

HMRC guidance will be updated in due course to reflect these changes.

10. Impact

10.1 The changes effected by this instrument should benefit business, charities and voluntary bodies by removing a supplementary charge in some cases.

10.2 The impact on the public sector is nil.

10.3 No Impact Assessment has been prepared for the changes effected by this instrument.

11. Regulating small business

The legislation applies to small business and should benefit them by removing a supplementary charge from some transactions.

12. Monitoring & review

As the changes are administrative and relieving, no formal monitoring is planned.

13. Contact

Jack Fletcher at HMRC (email: jack.fletcher@hmrc.gsi.gov.uk; tel: 0207 147 0252) can answer any queries regarding this instrument.